



BILLING CODE: 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-580-886]

Ferrovanadium from the Republic of Korea: Initiation of Less-Than-Fair-Value Investigation

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce

EFFECTIVE DATE: April 18, 2016

FOR FURTHER INFORMATION CONTACT: Patrick O'Connor or Aleksandras Nakutis, at (202) 482-0989 or (202) 482-3147, AD/CVD Operations, Enforcement and Compliance, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

The Petition

On March 28, 2016, the Department of Commerce (the Department) received an antidumping duty (AD) petition concerning imports of ferrovanadium from the Republic of Korea (Korea), filed in proper form on behalf of the Vanadium Producers and Reclaimers Association (VPRA) and VPRA members AMG Vanadium LLC (AMG V), Bear Metallurgical Company (Bear), Gulf Chemical & Metallurgical Corporation (Gulf), and Evraz Stratcor, Inc. (Stratcor) (Petitioners).¹ Petitioners are U.S. producers and wholesalers of ferrovanadium, and a trade or business association, a majority of whose members are U.S. producers and wholesalers of ferrovanadium.²

¹ See the Petition for the Imposition of Antidumping Duties: Ferrovanadium from the Republic of Korea, dated March 28, 2016 (the Petition).

² See Petition Supplement 1, at 2-3.

On March 31, 2016, and April 6, 2016, the Department requested additional information and clarification of certain areas of the Petition.³ Petitioners filed responses on April 4, 6, and 7, 2016.⁴

In accordance with section 732(b) of the Tariff Act of 1930, as amended (the Act), Petitioners allege that imports of ferrovanadium from Korea are being, or are likely to be, sold in the United States at less-than-fair value within the meaning of section 731 of the Act, and that such imports are materially injuring, or threatening material injury to, an industry in the United States. Also, consistent with section 732(b)(1) of the Act, the Petition is accompanied by information reasonably available to Petitioners supporting their allegations.

The Department finds that Petitioners filed this Petition on behalf of the domestic industry because Petitioners are interested parties as defined in section 771(9)(C), (E), and (F) of the Act. The Department also finds that Petitioners demonstrated sufficient industry support with respect to the initiation of the AD investigation that Petitioners are requesting.⁵

Period of Investigation

Because the Petition was filed on March 28, 2016, the period of investigation (POI) is, pursuant to 19 CFR 351.204(b)(1), January 1, 2015, through December 31, 2015.

³ See Letter from the Department to Petitioners entitled “Petition for the Imposition of Antidumping Duties on Imports of Ferrovanadium from the Republic of Korea: Supplemental Questions” dated March 31, 2016 (Supplemental Questionnaire); see also Letter from the Department to Petitioners entitled “Petition for the Imposition of Antidumping Duties on Imports of Ferrovanadium from the Republic of Korea: Supplemental Question” dated April 6, 2016.

⁴ See letter from Petitioners entitled “Ferrovanadium from the Republic of Korea – Petitioners’ Responses to the Department’s March 31, 2016, Supplemental Questions on the Petition and Amendment to the Petition to Modify Scope Language,” dated April 4, 2016. (Petition Supplement 1); see also letter from Petitioners entitled “Response of Petitioners to Supplemental Questions from the Department of Commerce Regarding the Petition for the Imposition of Antidumping Duties on *Ferrovanadium from the Republic of Korea*: Translation,” dated April 6, 2016; see also letter from Petitioners entitled “Response of the Petitioners to Supplemental Question from the Department of Commerce Regarding the Petition for the Imposition of Antidumping Duties on *Ferrovanadium from the Republic of Korea*,” dated April 7, 2016 (Petition Supplement 2).

⁵ See the “Determination of Industry Support for the Petition” section below.

Scope of the Investigation

The product covered by this investigation is ferrovanadium from Korea. For a full description of the scope of this investigation, *see* the “Scope of the Investigation,” in Appendix I of this notice.

Comments on Scope of the Investigation

During our review of the Petition, the Department issued questions to, and received responses from, Petitioners pertaining to the proposed scope to ensure that the scope language in the Petition would be an accurate reflection of the products for which the domestic industry is seeking relief.⁶

As discussed in the preamble to the Department’s regulations,⁷ we are setting aside a period for interested parties to raise issues regarding product coverage (scope). The Department will consider all comments received from parties and, if necessary, will consult with parties prior to the issuance of the preliminary determination. If scope comments include factual information (*see* 19 CFR 351.102(b)(21)), all such factual information should be limited to public information. In order to facilitate preparation of its questionnaires, the Department requests all interested parties to submit such comments by 5:00 p.m. Eastern Time (ET) on Monday, May 9, 2016, because 20 calendar days after the signature date of this notice falls on Sunday, May 8, 2016.⁸ Any rebuttal comments, which may include factual information, must be filed by 5:00 p.m. ET on Thursday, May 19, 2016, which is 10 calendar days after the initial comments deadline.

⁶ *See* Supplemental Questionnaire; *see also* Petition Supplement 1.

⁷ *See Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27323 (May 19, 1997).

⁸ *See* 19 CFR 351.303(b)(1) (“For both electronically filed and manually filed documents, if the applicable due date falls on a non-business day, the Secretary will accept documents that are filed on the next business day.”).

The Department requests that any factual information the parties consider relevant to the scope of the investigation be submitted during this time period. However, if a party subsequently finds that additional factual information pertaining to the scope of the investigation may be relevant, the party may contact the Department and request permission to submit the additional information.

Filing Requirements

All submissions to the Department must be filed electronically using Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS).⁹ An electronically filed document must be received successfully in its entirety by the time and date when it is due. Documents excepted from the electronic submission requirements must be filed manually (*i.e.*, in paper form) with Enforcement and Compliance's APO/Dockets Unit, Room 18022, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, and stamped with the date and time of receipt by the applicable deadlines.

Comments on Product Characteristics for AD Questionnaires

The Department requests comments from interested parties regarding the appropriate physical characteristics of ferrovanadium to be reported in response to the Department's AD questionnaires. This information will be used to identify the key physical characteristics of the subject merchandise in order to report sales and costs of production information accurately as well as to develop appropriate product-comparison criteria.

⁹ See 19 CFR 351.303 (for general filing requirements); *see also Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures*, 76 FR 39263 (July 6, 2011); *see also Enforcement and Compliance; Change of Electronic Filing System Name*, 79 FR 69046 (November 20, 2014) for details of the Department's electronic filing requirements, which went into effect on August 5, 2011. Information on help using ACCESS can be found at <https://access.trade.gov/help.aspx> and a handbook can be found at <https://access.trade.gov/help/Handbook%20on%20Electronic%20Filing%20Procedures.pdf>.

Interested parties may provide any information or comments that they believe are relevant to the development of physical characteristics for reporting and product matching purposes. Specifically, they may provide comments as to which characteristics are appropriate to use as: 1) general product characteristics and 2) product-comparison criteria. We note that it is not always appropriate to use all product characteristics as product-comparison criteria. We base product-comparison criteria on meaningful commercial differences among products. In other words, although there may be some physical product characteristics utilized by manufacturers to describe ferrovanadium, it may be that only a select few product characteristics take into account commercially meaningful physical characteristics. In addition, interested parties may comment on the order in which the physical characteristics should be used in matching products. Generally, the Department attempts to list the most important physical characteristics first and the least important characteristics last.

In order to consider the suggestions of interested parties in developing and issuing the AD questionnaires, all comments must be filed by 5:00 P.M. ET on May 9, 2016, which is 21 calendar days from the signature date of this notice. Any rebuttal comments must be filed by 5:00 P.M. ET on May 16, 2016. All comments and submissions to the Department must be filed electronically using ACCESS, as explained above, on the record of this Korea less-than-fair-value investigation.

Determination of Industry Support for the Petition

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) at least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of

the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall: (i) poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the “industry.”

Section 771(4)(A) of the Act defines the “industry” as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission (ITC), which is responsible for determining whether “the domestic industry” has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product,¹⁰ they do so for different purposes and pursuant to a separate and distinct authority. In addition, the Department’s determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law.¹¹

Section 771(10) of the Act defines the domestic like product as “a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.” Thus, the reference point from which the domestic like product

¹⁰ See section 771(10) of the Act.

¹¹ See *USEC, Inc. v. United States*, 132 F. Supp. 2d 1, 8 (CIT 2001) (citing *Algoma Steel Corp., Ltd. v. United States*, 688 F. Supp. 639, 644 (CIT 1988), *aff’d* 865 F.2d 240 (Fed. Cir. 1989)).

analysis begins is “the article subject to an investigation” (*i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the Petition).

With regard to the domestic like product, Petitioners do not offer a definition of the domestic like product distinct from the scope of the investigation. Based on our analysis of the information submitted on the record, we have determined that ferrovanadium, as defined in the scope, constitutes a single domestic like product, and we have analyzed industry support in terms of that domestic like product.¹²

In determining whether Petitioners have standing under section 732(c)(4)(A) of the Act, we considered the industry support data contained in the Petition with reference to the domestic like product as defined in the “Scope of the Investigation,” in Appendix I of this notice. To establish industry support, Petitioners provided the 2015 production of the domestic like product by the two petitioning companies that produce ferrovanadium in the United States (AMG Vanadium, LLC and Bear Metallurgical Company).¹³ Petitioners state that these two companies are the only known producers of ferrovanadium in the United States; therefore, the Petition is supported by 100 percent of the U.S. industry.¹⁴

Our review of the data provided in the Petition and other information readily available to the Department indicates that Petitioners have established industry support.¹⁵ First, the Petition established support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product and, as such, the Department is not required

¹² For a discussion of the domestic like product analysis in this case, *see* Antidumping Duty Investigation Initiation Checklist: Ferrovanadium from the Republic of Korea (Korea AD Initiation Checklist), at Attachment II, Analysis of Industry Support for the Antidumping Duty Petition Covering Ferrovanadium from the Republic of Korea. This checklist is dated concurrently with this notice and on file electronically via ACCESS. Access to documents filed via ACCESS is also available in the Central Records Unit, Room B8024 of the main Department of Commerce building.

¹³ *See* Volume I of the Petition, at 3-4 and 6-7; *see also* Petition Supplement 1, at 3 and Exhibit SQ-3.

¹⁴ *See* Volume I of the Petition, at 3-4.

¹⁵ *See* Korea AD Initiation Checklist, at Attachment II.

to take further action in order to evaluate industry support (*e.g.*, polling).¹⁶ Second, the domestic producers (or workers) have met the statutory criteria for industry support under section 732(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the Petition account for at least 25 percent of the total production of the domestic like product.¹⁷ Finally, the domestic producers (or workers) have met the statutory criteria for industry support under section 732(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the Petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petition.¹⁸ Accordingly, the Department determines that the Petition was filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act.

The Department finds that Petitioners filed the Petition on behalf of the domestic industry because they are interested parties as defined in sections 771(9)(C), (E), and (F) of the Act and they have demonstrated sufficient industry support with respect to the AD investigation that they are requesting the Department initiate.¹⁹

Allegations and Evidence of Material Injury and Causation

Petitioners allege that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the imports of the subject merchandise sold at less than normal value (NV). In addition, Petitioners allege that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.²⁰

Petitioners contend that the industry's injured condition is illustrated by reduced market share, underselling and price suppression or depression, lost sales and revenues, decline in

¹⁶ See section 732(c)(4)(D) of the Act; *see also* Korea AD Initiation Checklist, at Attachment II.

¹⁷ See Korea AD Initiation Checklist, at Attachment II.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ See Volume I of the Petition, at 24-25 and Exhibit I-4.

shipments and toll production volume, negative impact on employment, and decline in financial performance.²¹ We have assessed the allegations and supporting evidence regarding material injury, threat of material injury, and causation, and we have determined that these allegations are properly supported by adequate evidence and meet the statutory requirements for initiation.²²

Allegation of Sales at Less-Than-Fair Value

The following is a description of the allegation of sales at less-than-fair value upon which the Department based its decision to initiate the investigation of imports of ferrovanadium from Korea. The sources of data relating to U.S. price and the usage quantities and input values relating to NV are discussed in greater detail in the initiation checklist.

Export Price

Petitioners based U.S. prices on three affidavits documenting U.S. sales of ferrovanadium from Korea through a U.S. trading company during the POI.²³ Petitioners deducted from the referenced prices expenses associated with exporting and delivering the ferrovanadium to a U.S. warehouse; these expenses include foreign inland freight expenses, foreign brokerage and handling expenses, ocean freight and U.S. terminal handling expenses, marine insurance expense, U.S. import duties, U.S. harbor maintenance fees, and the mark-up by the U.S. trading company to cover its selling, general, and administrative (SG&A) expenses and profit.²⁴

Normal Value

Petitioners asserted that they were unable to obtain pricing data for sales of Korean-produced ferrovanadium by either Korean ferrovanadium producers or tollees of Korean

²¹ See Volume I of the Petition, at 14-44 and Exhibits I-4 and I-6 through I-15; *see also* Petition Supplement 1, at 1, 4 and Exhibit SQ-1.

²² See Korea AD Initiation Checklist, at Attachment III, Analysis of Allegations and Evidence of Material Injury and Causation for the Antidumping Duty Petition Covering Ferrovanadium from the Republic of Korea.

²³ See Volume I of the Petition, at Exhibit I-13; *see also* Volume II of the Petition, at 2 and Exhibit II-1.

²⁴ See Volume II of the Petition, at 2-6 and Exhibits II-1 through II-8; *see also* Petition Supplement 1, at 7 -8 and Exhibits SQ-9 and SQ-22.

ferrovanadium producers in the Korean market or in third country markets.²⁵ Consequently, Petitioners, pursuant to sections 773(a)(1)(C) and 773(a)(4) of the Act, relied on constructed value (CV) as the basis for NV.

Normal Value Based on Constructed Value

Pursuant to section 773(e) of the Act, CV consists of the cost of manufacturing (COM); SG&A expenses; financial expenses; packing expenses; and, profit. Petitioners calculated COM and packing expenses using usage rates that are based on a U.S. producer's experience during the proposed POI.²⁶ Petitioners multiplied the usage quantities (including the quantity of labor and energy used) of the inputs used to manufacture ferrovanadium in Korea by publicly-available Korean values.²⁷ Petitioners relied on a U.S. producer's experience to determine factory overhead.²⁸ Petitioners relied on the financial statements of EG Metal Corporation (EG Metal), a Korean producer of identical merchandise, to determine a combined SG&A and financial expense rate.²⁹ Petitioners relied on the same financial statements to calculate the profit rate; however, because EG Metal operated at a loss, Petitioners conservatively did not include an amount for profit in the calculation of CV.³⁰

Fair Value Comparisons

Based on the data provided by Petitioners, there is reason to believe that imports of ferrovanadium from Korea are being, or are likely to be, sold in the United States at less-than-fair value. Based on comparisons of export price (EP) to NV in accordance with

²⁵ See Petition Supplement 1, at 9; *see also* Korea AD Initiation Checklist.

²⁶ See Korea AD Initiation Checklist.

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

sections 772 and 773 of the Act, the estimated dumping margins for ferrovanadium for Korea range from 20.25 to 54.69 percent.³¹

Initiation of Less-than-Fair-Value Investigation

Based upon the examination of the AD Petition on ferrovanadium from Korea, we find that the Petition meets the requirements of section 732 of the Act. Therefore, we are initiating a less-than-fair-value investigation to determine whether imports of ferrovanadium from Korea are being, or are likely to be, sold in the United States at less-than-fair value. In accordance with section 733(b)(1)(A) of the Act and 19 CFR 351.205(b)(1), unless postponed, we will make our preliminary determination no later than 140 days after the date of this initiation.

Respondent Selection

Petitioners identified a number of producers and/or exporters of Korean ferrovanadium.³² Following our practice in AD investigations involving market economy countries, in the event the Department determines that the number of known exporters or producers for this investigation is large, the Department may select respondents for individual examination based on U.S. Customs and Border Protection (CBP) data for U.S. imports under the Harmonized Tariff Schedule of the United States number listed in the scope of the investigation in Appendix I of this notice. We intend to place CBP data on the record within five business days of publication of this *Federal Register* notice. Interested parties who want to comment on the CBP data and/or respondent selection must do so within seven calendar days after placement of the CBP data on the record of this investigation. Interested parties who want to submit rebuttal comments must submit those comments five calendar days after the deadline for the initial

³¹ See Petition Supplement 1 at Exhibit SQ-24. See also Korea AD Initiation Checklist at attachment 5.

³² See letter from Petitioners entitled "Response of the Petitioners to Supplemental Question from the Department of Commerce Regarding the Petition for the Imposition of Antidumping Duties on *Ferrovanadium from the Republic of Korea*," dated April 7, 2016; see also Petition Supplement 2, at SQ2-1.

comments. All comments must be filled electronically using ACCESS. An electronically-filled document must be received successfully in its entirety by ACCESS, by 5 p.m. ET by the due date. Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305(b). Instructions for filing such applications may be found on the Department's Web site at <http://enforcement.trade.gov/apo>. We intend to make our decision regarding respondent selection within 20 days of publication of this notice.

Distribution of Copies of the Petition

In accordance with section 732(b)(3)(A) of the Act and 19 CFR 351.202(f), copies of the public version of the Petition have been provided to the government of Korea via ACCESS. To the extent practicable, we will attempt to provide a copy of the public version of the Petition to the exporters named in the Petition, as provided under 19 CFR 351.203(c)(2).

ITC Notification

We will notify the ITC of our initiation, as required by section 732(d) of the Act.

Preliminary Determination by the ITC

The ITC will preliminarily determine, within 45 days after the date on which the Petition was filed, whether there is a reasonable indication that imports of ferrovanadium from Korea are materially injuring or threatening material injury to a U.S. industry.³³ A negative ITC determination will result in the investigation being terminated;³⁴ otherwise, the investigation will proceed according to statutory and regulatory time limits.

Submission of Factual Information

Factual information is defined in 19 CFR 351.102(b)(21) as: (i) evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly

³³ See section 733(a) of the Act.

³⁴ *Id.*

available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by the Department; and (v) evidence other than factual information described in (i)–(iv). Any party, when submitting factual information, must specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted³⁵ and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct.³⁶ Time limits for the submission of factual information are addressed in 19 CFR 351.301, which provides specific time limits based on the type of factual information being submitted. Please review the regulations prior to submitting factual information in this investigation.

Extensions of Time Limits

Parties may request an extension of time limits before the expiration of a time limit established under 19 CFR 351, or as otherwise specified by the Secretary. In general, an extension request will be considered untimely if it is filed after the time limit established under 19 CFR 351 expires. For submissions that are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. ET on the due date. Under certain circumstances, the Department may elect to specify a different time limit for extension requests for submissions which are due from multiple parties simultaneously. In such cases, we will inform parties of the time limit by issuing a letter or memorandum setting forth the deadline (including a specified time) by which extension requests must be filed to be considered timely. An extension request must be made in a separate, stand-alone submission; under limited

³⁵ See 19 CFR 351.301(b).

³⁶ See 19 CFR 351.301(b)(2).

circumstances we will grant untimely-filed requests for the extension of time limits. Review *Extension of Time Limits; Final Rule*, 78 FR 57790 (September 20, 2013), available at <http://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm>, prior to submitting extension requests in this investigation.

Certification Requirements

Any party submitting factual information in an AD or CVD proceeding must certify to the accuracy and completeness of that information.³⁷ Parties are hereby reminded that revised certification requirements are in effect for company/government officials, as well as their representatives. Investigations initiated on the basis of petitions filed on or after August 16, 2013, and other segments of any AD or CVD proceedings initiated on or after August 16, 2013, should use the formats for the revised certifications provided at the end of the *Final Rule*.³⁸ The Department intends to reject factual submissions if the submitting party does not comply with applicable revised certification requirements.

Notification to Interested Parties

Interested parties must submit applications for disclosure under administrative protective order (APO) in accordance with 19 CFR 351.305. On January 22, 2008, the Department published *Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures*, 73 FR 3634 (January 22, 2008). Parties wishing to participate in this investigation should ensure that they meet the requirements of these procedures (*e.g.*, the filing of letters of appearance as discussed in 19 CFR 351.103(d)).

³⁷ See section 782(b) of the Act.

³⁸ See *Certification of Factual Information to Import Administration during Antidumping and Countervailing Duty Proceedings*, 78 FR 42678 (July 17, 2013) (*Final Rule*); see also frequently asked questions regarding the *Final Rule*, available at http://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.

This notice is issued and published pursuant to section 777(i) of the Act.

Dated: April 18, 2016.

Christian Marsh
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

Appendix I

Scope of the Investigation

The product covered by this investigation is all ferrovanadium regardless of grade (*i.e.*, percentage of contained vanadium), chemistry, form, shape, or size. Ferrovanadium is an alloy of iron and vanadium. Ferrovanadium is classified under Harmonized Tariff Schedule of the United States (HTSUS) item number 7202.92.0000. Although this HTSUS item number is provided for convenience and Customs purposes, the written description of the scope of the investigation is dispositive.

[FR Doc. 2016-09537 Filed: 4/22/2016 8:45 am; Publication Date: 4/25/2016]